



UNITED STATES GOVERNMENT  
**NATIONAL LABOR RELATIONS BOARD**  
FREEDOM OF INFORMATION ACT BRANCH  
Washington, D.C. 20570

Via email

July 21, 2022

Re: FOIA Request NLRB-2022-001327

Dear Rose McCartney (Husch Blackwell Law Firm)

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on June 9, 2022, in which you seek all documents in *United Food and Commercial Workers, Local 7 (King Soopers, Store 75)*, Case No. 27-CB-296359. You agreed to assume financial responsibility for the processing of your request in the amount of \$37.00.

We acknowledged your request on June 10, 2022.

Your request is denied in part and granted in part, as explained below.

After conducting a search of the Agency's electronic casehandling system, NxGen, the requested case has been identified as being related to another NLRB case that is currently pending before the Agency. Given the open status of that related proceeding, Exemption 7(A) of the FOIA permits the Agency to withhold records or information from any or all related case files, even if the requested case is closed, if disclosure could reasonably be expected to interfere with the related, pending proceeding. 5 U.S.C. § 552 (b)(7)(A); *See New England Med. Ctr. Hosp. v. NLRB*, 548 F.2d 377, 385-86 (1st Cir. 1976); *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978). This is because the FOIA is not intended to function as a private discovery tool. *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. at 242. The protections of Exemption 7(A) extend to any record whose release would enable a respondent or potential respondent to tailor a defense or otherwise obtain an unfair litigation advantage by premature disclosure. *See Ehringhaus v. FTC*, 525 F. Supp. 21, 23-24 (D.D.C. 1980); *Swan v. SEC*, 96 F.3d 498, 499-500 (D.C. Cir. 1996). Moreover, the protection applies until all reasonably foreseeable administrative and judicial proceedings conclude. *See Juarez v. Dep't of Justice*, 518 F.3d 54, 58-59 (D.C. Cir. 2008). Any records contained in the requested case file that may be responsive are thus protected from disclosure at this time.

Here, specifically, notwithstanding that the requested case, Case No. 27-CB-296359 is closed, it is related to several unfair labor practice cases currently

being investigated by the Region in Case Nos. 27-CB-294694, 27-CB-294942, 27-CB-294987, 27-CB-294997, 27-CB-295274, 27-CB-295534, 27-CB-295885, 27-CB-296093, 27-CB-296164, 27-CB-296301, and 27-CB-296155.

Consequently, FOIA Exemption 7(A) is applicable, since disclosure of the requested records at this time could interfere with the related, pending proceedings. Therefore, your request is denied as the investigatory records in the requested case file are being withheld in full pursuant to Exemption 7(A).

Your request is granted to the extent that the formal records in the requested case are releasable, as they are available to the public pursuant to NLRB FOIA regulations. Upon my review, redactions have been made to portions of these records to protect the privacy interests of individuals named in the records, pursuant to FOIA Exemption 6, which pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy, and FOIA Exemption 7(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6) and (b)(7)(C).

Please note that the Exemption 7(A) protection is “temporal in nature.” *Citizens for Responsibility & Ethics in Wash. v. Dep’t of Justice*, 746 F.3d 1082, 1097 (D.C. Cir 2014) (citing *NLRB v. Robbins Tire*, 437 U.S. 214, 223-24 230-32 (1978)). As such, case file records may become disclosable, subject to applicable exemptions, after the case closes, that is, once a Board decision and/or court order issues, there has been full compliance with a settlement, or the case has otherwise been closed under Agency procedures. Accordingly, you may wish to file a new request at that time.

The status of the open, related cases can be tracked on the Agency website at [www.nlr.gov](http://www.nlr.gov) by going to the Cases & Decisions tab, clicking case search, entering the case number in the search box and viewing the case page or by clicking the links here:

<https://www.nlr.gov/case/27-CB-294694>, <https://www.nlr.gov/case/27-CB-294942>, <https://www.nlr.gov/case/27-CB-294987>, <https://www.nlr.gov/case/27-CB-294997>, <https://www.nlr.gov/search/case/27-CB-295274>, <https://www.nlr.gov/search/case/27-CB-295534>, <https://www.nlr.gov/search/case/27-CB-295885>, <https://www.nlr.gov/case/27-CB-296093>, <https://www.nlr.gov/case/27-CB-296164>, <https://www.nlr.gov/case/27-CB-296301>, and <https://www.nlr.gov/case/27-CB-296155>.

For the purpose of assessing fees, we have placed you in Category A, commercial use requester. This category refers to requests “from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose

behalf the request is made, which can include furthering those interests through litigation.” NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(v).

Consistent with this fee category, you “will be assessed charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought.” 29 C.F.R. § 102.117(d)(2)(ii)(A). Charges are \$9.25 per quarter-hour of professional time. 29 C.F.R. § 102.117(d)(2)(i).

Fifteen minutes of professional time was expended in reviewing for release the requested material. Accordingly, please remit \$9.25.

Payment Instructions: Due to the COVID-19 pandemic and resulting widespread employee telework at the Agency’s Headquarters offices, we are no longer accepting checks or money orders as payment at this time. To submit payment for your FOIA request, please use [www.pay.gov](http://www.pay.gov). From the [www.pay.gov](http://www.pay.gov) home page, scroll down to the bottom left corner to select “Pay a FOIA Request.” Click “See all options” and go to “Filter By Agency” to check the box for the National Labor Relations Board. Continue following instructions on the website. Please remember to include the Invoice Number, which is the NLRB FOIA Case No., and the amount you intend to pay. Further, please be advised that all FOIA payments must be paid in full before any future FOIA requests are processed.

You may contact Lalitta Gillis, the FOIA Specialist who processed your request, at (202) 273-0101 or by email at [Lalitta.Gillis@nrlb.gov](mailto:Lalitta.Gillis@nrlb.gov), as well as the Agency’s FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Specialist, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency’s FOIA Public Liaison is:

Kristine M. Minami  
FOIA Public Liaison  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: [FOIAPublicLiaison@nrlb.gov](mailto:FOIAPublicLiaison@nrlb.gov)  
Telephone: (202) 273-0902  
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

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Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001  
Email: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: (202) 741-5770  
Toll free: (877) 684-6448  
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt  
Chief FOIA Officer  
National Labor Relations Board  
1015 Half Street, S.E., 4<sup>th</sup> Floor  
Washington, D.C. 20570  
Email: [DLCFOIAAppeal@nrlrb.gov](mailto:DLCFOIAAppeal@nrlrb.gov)

Any appeal must be postmarked or electronically submitted within 90 days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Specialist, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ *Synta E. Keeling*

Synta E. Keeling  
FOIA Officer

Attachment: (16 pages)